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REMARKS

Applicants appreciate the Examiner's thorough consideration provided

the present application. Claims 1-3, 5-11, 13-21 and 28-39 are now present in

the application. Claims 32-39 have been added. Claims 4, 12 and 22-27 have

been cancelled. Claims 1, 11, 28 and 30 are independent. Reconsideration of

this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. §119

Applicants thank the Examiner for acknowledging Applicants' claim for

foreign priority under 35 U.S.C. §119, and receipt of the certified priority

document.

Information Disclosure Citation

Applicants thank the Examiner for considering the references supplied

with the Information Disclosure Statement filed on January 10, 2003, and for

providing Applicants with an initialed copy of the PTO-1449 form filed

therewith.

Drawings

Applicants thank the Examiner for accepting Applicants' drawings.

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Claim Rejections Under 35 U.S.C. §112

Claims 9, 28 and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed.

In view of the foregoing amendments, in which the Examiner's helpful suggestions have been followed, it is respectfully submitted that this rejection has been addressed. Accordingly, all pending claims are now definite and clear. Reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, are therefore respectfully requested.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-3, 5, 6, 8, 9, 11, 13-20, 22, 24-26, 30 and 31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Metz et al., U.S. Patent No. 5,666,293 (referred to hereinafter as Metz). Claims 4, 7, 10, 12, 21, 23 and 27-29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Metz in view of Shimomura et al., U.S. Patent No. 6,473,858 (referred to hereinafter as Shimomura). These rejections insofar as they pertain to the present claims, are respectfully traversed.

Complete discussions of the Examiner's rejections are set forth in the Office Action, and are not being repeated here.

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In light of the foregoing amendments to the claims, Applicants respectfully submit that these rejections have been obviated and/or rendered moot. Without conceding to the propriety of the Examiner's rejections, but merely to timely advance the prosecution of the application, as the Examiner will note, independent claims 1, 11, 28 and 30 have been amended to address the Examiner's rejections.

Independent claim 1 recites a combination of elements including "a version comparing unit for comparing a version of a software code included in an advertisement broadcasting signal and a version of a previously installed software code".

Independent claim 11 recites a combination of steps including "receiving an advertisement broadcasting signal in which a user data containing a software code is inserted".

Independent claim 28 recites a combination of elements including "a code detecting unit for receiving a digital advertisement broadcasting signal and detecting whether the software code is inserted in the digital advertisement broadcasting signal".

Independent claim 30 recites a combination of steps including "checking whether a software code inserted in an advertisement broadcasting signal corresponds to a model of the receiving apparatus".

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Applicants respectfully submit that the combinations of elements set

forth in claim 1 and 28 and the combinations of steps set forth in claim 11 and

30 are not disclosed or suggested by the references relied on by the Examiner.

Metz discloses a downloading operating system software through a

broadcast channel by selecting a designated network logical channel 0 and

receiving a broadcasting signal from the designated network logical channel 0.

(see FIG. 9; col. 35, lines 30-53). As the Examiner correctly indicated on page

10 of the instant Office Action, Metz fails to teach that the software code is

included in an advertisement broadcasting signal as recited in claims 1, 11, 28

and 30.

The Examiner turned to rely on Shimomura's teaching of a broadcast

signal including an advertisement signal to assert that it would have been

obvious for one skilled in the art at the time of invention to modify Metz in view

of Shimomura to distribute advertisement signal in digital broadcasts.

However, Metz actually teaches away from modifying Metz in view of

Shimomura as suggested by the Examiner, because Metz requires the use of a

designated channel for the software upgrade. In particular, Metz teaches that

the channel 0 carries the operating system upgrade files, but it does not carry

any advertisement broadcasting signal.

The present invention inserts the software code into the advertisement

broadcasting signal so that the user can watch the advertisement and program

without interruption (i.e., the user is not forced to switch to the channel 0)

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during software upgrade. Therefore, the present invention provides the user a

more user-friendly way to upgrade software. Unlike the present invention,

Metz requires the user system to switch to a designated channel 0, which is for

broadcasting operating system upgrade files, without advertisement

broadcasting signal, in order to upgrade the software. Thus, there is no

motivation to provide the software code in the advertisement broadcast signal

in Metz.

Since one skilled in the art would not have any motivation to modify Metz

in view of Shimomura, it is improper to use the combination of Metz and

Shimomura to reject independent claims 1, 11, 28 and 30. Therefore,

independent claims 1, 11, 28 and 39 define over the references relied on by the

Examiner.

In addition, claims 2, 3, 5-10, 13-21, 29 and 31 depend, either directly or

indirectly, from independent claims 1, 11, 28 and 30, and are therefore

allowable based on their respective dependence from independent claims 1, 11,

28 and 30.

In view of the above remarks, claims 1-3, 5-11, 13-21 and 28-39 clearly

define the present invention over the references relied on by the Examiner.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C.

§§102 and 103 are respectfully requested.

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Additional Claims

Claims 32-39 have been added for the Examiner's consideration. Claims

32-39 depend from independent claims 1, 11, 28 and 30, and are thus

allowable due to their respective dependence on independent claims 1, 11, 28

and 30, and/or due to the additional recitations included in these claims.

Favorable consideration and allowance of claims 32-39 are respectfully

requested.

Additional Cited References

Since the remaining patents cited by the Examiner have not been utilized

to reject the claims, but rather to merely show the state of the art, no further

comments are necessary with respect thereto.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or

rendered moot. Applicants therefore respectfully request that the Examiner

reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the

Office Action, and that as such, the Examiner is respectfully requested to send

the application to Issue.

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In the event there are any matters remaining in this application, the Examiner is invited to contact the undersigned at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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